IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Appeal From Order No. 251 of 2005
With
Appeal From Order No. 263 of 2005

Date of decision: 15th November, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 251 of 2005

Uttaranchal State Road Transport Corporation,
through its Regional Manager,
Nainital …… Appellant

Versus

1. Smt. Jyoti Tewari W/o Late Sri Neeraj Kumar Tewari.
2. Km. Shakshi Tewari (Minor),
   D/o Late Sri Neeraj Kumar Tewari.
3. Sri H.C. Tewari, father of Late Sri Neeraj Kumar Tewari.
4. Smt. Lalita Tewari, mother of Late Neeraj Kumar Tewari.
   All R/o Pyare Lodge, Cantt. Tallital
   Nainital, Uttaranchal. …….. Respondents

Mr. A.N. Sharma, Advocate for the appellant.
Mr. Neeraj Upreti, Advocate for the respondents.

With

Appeal From Order No. 263 of 2005

1. Smt. Jyoti Tewari W/o Late Sri Neeraj Kumar Tewari.
2. Km. Shakshi Tewari (Minor),
   D/o Late Sri Neeraj Kumar Tewari.
3. Sri H.C. Tewari, father of Late Sri Neeraj Kumar Tewari.
4. Smt. Lalita Tewari, mother of Late Neeraj Kumar Tewari.
   All R/o Pyare Lodge, Cantt. Tallital,
   Nainital, Uttaranchal …….. Appellants

Versus

Uttaranchal State Road Transport Corporation,
through its Regional Manager,
Nainital. …… Respondent

Mr. Neeraj Upreti, Advocate for the appellants.
Mr. A.N. Sharma, Advocate for the respondent.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

The impugned Award dated 31.03.2005 passed by Motor Accident Claims Tribunal / Addl. District Judge, Nainital in Motor Accident Claim Petition No. 278 of 2004 has given rise to the filing of

these two appeals i.e. A.O. No. 251 of 2005 and A.O. No. 263 of 2005.

2. A.O. No. 263 of 2005 has been preferred by the claimants for enhancement of the compensation awarded by the Tribunal, whereas A.O. No. 251 of 2005 is at the behest of the Uttaranchal State Road Transport Corporation against the Award.

3. The claimants, who are unfortunate widow, minor daughter and parents of deceased Neeraj Kumar Tewari, claimed compensation of Rs. 25,00,000/- for his death in motor accident on 27.02.2004 when the Bus bearing registration No. UP06-4140, in which he was traveling from Nainital to Haldwani, met with an accident due to the rash and negligent driving of its driver and fell in a gorge resulting in the unfortunate death of several occupants of the Bus including Neeraj Kumar Tewari. The claimants pleaded that deceased Neeraj Kumar Tewari used to earn more than Rs. 10,000/- per month.

4. The Uttaranchal State Road Transport Corporation, owner of the Bus, contested the claim and pleaded that the driver of the Bus was not responsible for the accident.

5. The claimants examined PW1 Smt. Jyoti Tewari in support of their claim, whereas the Transport Corporation did not examine any witness in rebuttal. The Transport Corporation, however, adduced in evidence certified copy of the deposition of Sri M.D. Kotwal recorded as DW1 in the other Claim Petition No. 77 of 2004 (Vimla Arya & others Vs. U.P.S.R.T.C.).

6. The Tribunal, on the evidence led by the parties, held that Neeraj Kumar Tewari died on account of the injuries sustained by him in the motor accident on 27.02.2004; the accident occurred due to the rash and negligent driving of the driver of the Bus; and the

Uttaranchal State Road Transport Corporation, being the owner of the Bus, was liable to pay compensation to the claimants.

7. Relying upon the evidence led by the claimants about the income of the deceased including his salary certificate, the Tribunal assessed his income at Rs. 72,000/- per annum. By deducting 1/3rd of the said amount as the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 48,000/- per annum. Considering the age of the deceased; his widow; minor daughter; and parents, the Tribunal selected the multiplier of '16'. By multiplying the annual dependency of Rs. 48,000/- with the multiplier of '16', the compensation was worked out to Rs. 7,68,000/-. The Tribunal awarded Rs. 5,000/- towards Funeral Expenses and Rs. 5,000/- for Loss of Consortium to the widow. Thus, a total sum of Rs. 7,78,000/- was awarded as compensation to the claimants for the death of Neeraj Kumar Tewari in the motor accident. The Tribunal, further, directed the Transport Corporation to pay interest at the rate of 7% per annum on the amount of compensation in the event of its failure to pay compensation to the claimants within a period of one month from the date of the Award.

8. Mr. A.N. Sharma, the learned counsel for the Transport Corporation submitted that the Tribunal has erred in assessing the income of the deceased at Rs. 72,000/- per annum; in selecting the higher multiplier of '16'; and in awarding excessive compensation of Rs. 7,78,000/- to the claimants.

9. Mr. Neeraj Uperti, the learned counsel for the claimants, on the other hand, submitted that the Tribunal has erred in not taking into consideration the other income of the deceased while assessing his income at Rs. 72,000/- per annum; in selecting the lower multiplier of '16' though the Second Schedule prescribes multiplier of '17' for the age-group of 30-35 years; in not awarding any amount towards Loss of Estate; and in not awarding any interest on the amount of

compensation and in directing only a conditional payment of interest in the event of Transport Corporation's failure to pay the amount of compensation to the claimants within a period of one month from the date of the Award.

10. The findings recorded by the Tribunal that deceased Neeraj Kumar Tewari died on account of the injuries sustained by him in the motor accident on 27.02.2004 and the driver of the Bus was responsible for the accident are based on the evidence available before the Tribunal. The manner in which the Bus is said to have fallen in the gorge does not leave any room for doubt about the negligence of the driver of the Bus, which led to the unfortunate accident resulting in the death of the several occupants of the Bus including Neeraj Kumar Tiwari. We, therefore, do not find any infirmity in the above findings.

11. As the accident occurred due to the rash and negligent driving of the driver of the Bus, the Tribunal has rightly held the Transport Corporation, being the owner of the Bus, liable to pay compensation to the claimants.

12. In a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal / Court should be just and proper compensation in the facts and circumstances of the case. The Apex Court, in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in **(2005) 6 Supreme Court Cases 236,** observed in paras 8 to 10:

> "8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances

> that the deceased might have got better employment or income or might have lost his employment or income together.
>
> 9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.
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> 10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."

13. Though the claimants pleaded that deceased Neeraj Kumar Tewari used to earn more than Rs. 10,000/- per month, the evidence led before the Tribunal, in the form of his salary certificate, could establish his income to the extent of Rs. 5,900/- per month only. The Tribunal, therefore, has rightly assessed the income of the deceased at Rs. 72,000/- per annum.

14. Considering the number of the persons dependent on the income of the deceased, the Tribunal has rightly deducted 1/3rd of Rs. 72,000/- as his personal expenses while assessing the claimants' dependency at Rs. 48,000/- per annum.

15. The multiplier of '16' selected by the Tribunal also cannot be found fault with in view of the dictum of the Apex Court in the case of **Kanhaiyalal Kataria & others Vs. Mukul Chaturvedi & others** reported in **(2005) 12 SCC 190.** That apart, claimant No. 2 Km. Shakshi Tewari, minor daughter of the deceased, was aged about 2 years on the date of the accident. As such, her mother claimant No. 1 Smt. Jyoti Tewari, widow of deceased Neeraj Kumar Tewari, would be required to spend substantial amount on her education for a period

of about 20 years and, thereafter, on her marriage. We, therefore, do not find any infirmity in the selection of multiplier of '16' by the Tribunal in the peculiar facts and circumstances of the present case.

16. The compensation of Rs. 7,68,000/-, assessed by the Tribunal by multiplying the annual dependency of Rs. 48,000/- with the multiplier of '16', we are satisfied, is just and proper compensation in the facts and circumstances of the present case.

17. The Tribunal, though, has awarded Rs. 5,000/- towards Funeral Expenses and Rs. 5,000/- for Loss of Consortium to the widow, has not awarded any amount towards Loss of Estate. We, therefore, award Rs. 5,000/- towards Loss of Estate.

18. With the above addition, the claimants become entitled to receive a total sum of Rs. 7,83,000/- (Rupees Seven Lakhs and Eighty Three Thousand only) as compensation for the death of Neeraj Kumar Tewari in the motor accident on 27.02.2004.

19. The Tribunal has fallen into error in not awarding any interest on the amount of compensation to the claimants. By directing only a conditional payment of interest by the Transport Corporation in the even of its failure to pay the amount of compensation to the claimants within a period of one month from the date of the Award, the Tribunal has deprived the claimants of the amount of interest, which was otherwise payable to them. With a view to avoid any possible delay in the computation of the amount of interest by the Claims Tribunal, we deem it proper to quantify the same ourselves. The accident, in the present case, took place on 27.02.2004 and the claim petition was filed on 05.11.2004. The impugned Award was passed by the Tribunal on 31.03.2005 and the entire amount of compensation awarded by the Tribunal was deposited by the Transport Corporation in compliance of this Court's order dated 16.06.2005 by 16.07.2005.

Taking all the above-mentioned relevant factors into consideration, we quantify the amount of interest at Rs. 45,000/-.

20. The Transport Corporation, therefore, is directed to deposit the enhanced amount of Rs. 5,000/- (Rupees Five Thousand only) and the quantified interest of Rs. 45,000/- (Rupees Fourty Five Thousand only) [Total Rs. 50,000/-] before the concerning Claims Tribunal within a period of two months from today. The entire amount of Rs. 50,000/- (Rupees Fifty Thousand only), now to be deposited by the Transport Corporation, shall be released in favour of claimant No. 1 Smt. Jyoti Tewari.

21. The sum of Rs. 25,000/- (Rupees Twenty Five Thousand only), deposited by the Transport Corporation as mandatory deposit under Section 173 of the Motor Vehicles Act 1988 while filing the appeal against the Award, be remitted to the concerning Claims Tribunal immediately.

22. With the above directions, both the appeals i.e. A.O. No. 251 of 2005 and A.O. No. 263 of 2005 stand disposed of.

23. No order as to costs.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**
15.11.2006 15.11.2006

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